

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, 14-CR-399 (ENV)
4 Plaintiff, United States Courthouse
5 -against- May 4, 2018
10:00 a.m.

6 ABRAXAS J. DISCALA, ALSO
7 KNOWS AS AJ DISCALA, AND
KYLEEN CANE,

8 Defendants.
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10 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
11 BEFORE THE HONORABLE ERIC N. VITALIANO
UNITED STATES DISTRICT JUDGE
BEFORE A JURY

12 APPEARANCES

13 For the Government: UNITED STATES ATTORNEY'S OFFICE
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1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: Next case on the calendar is
3 *U.S.A. versus Discala and Cane*, Case Number 14-CR-399, on or
4 for jury trial.

5 Will the parties please note their appearances
6 beginning with the government.

7 MS. JONES: Shannon Jones, Mark Bini, and Patrick
8 Hein for the United States. Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. ROSS: Good morning, Judge. Charles Ross and
11 Andrew Bowman for Mr. Discala.

12 MR. BOWMAN: Good morning.

13 MR. RIOPELLE: Good morning, Your Honor. Roland
14 Riopelle and Robert Caliendo for the Defendant Kyleen Cane.

15 THE COURT: Good morning.

16 THE COURTROOM DEPUTY: Counsel for both sides are
17 present and Defendant Discala is present.

18 MR. RIOPELLE: Cane is on her way, Judge.

19 THE COURT: We're only marking the note.

20 MR. RIOPELLE: Okay.

21 THE COURT: All right, we have a note which has been
22 marked as Court's 5. The clerk will read it into the record.

23 (Court Exhibit 5, was received in evidence.)

24 THE COURTROOM DEPUTY: Your Honor, can we please get
25 the following documents, please.

1 One, documents for overt act B, Count One.

2 Two, David Ben-Bassat Glendale account trading
3 records blueprint.

4 Three, text messages between Kyleen and David where
5 she said: George number go 530.

6 Four, match green and blue line graph trades of
7 Cubed buy and sell. Also the blueprint for the graph charts.

8 Five, call Count Nine.

9 Signed by William Williamson.

10 THE COURT: We're assuming that's a replay of the
11 one you played yesterday.

12 MR. BINI: Yes, Your Honor.

13 MR. ROSS: Yeah, we agree.

14 THE COURT: What we'll do is when you all gather all
15 the documents, we'll send them in, as soon as you have those.
16 We'll come back and play the excerpt.

17 MS. JONES: And one issue I wanted to raise, Your
18 Honor, is that for these Deb Oremland charts, there appear to
19 be two that the parties are in agreement that we can send back
20 that have blue and green on them.

21 We are getting hard copies of those charts. The one
22 we have in our binders were prior drafts, not the ones shown
23 to the jury, so we are getting the ones that were shown to the
24 jury. And the ones that were shown to the jury have the
25 backup of what was relied on to create those charts, the

1 government exhibit numbers.

2 So it's the government's position that the
3 government exhibits that are listed on those charts are the
4 underlying data for those chart. That's the data that should
5 go back with those charts, not something extra.

6 And I also wanted to flag that this data is all
7 electronic in I think Excel sheet. We were planning on
8 putting them on a disc, but I don't know if the jury has the
9 ability to review discs.

10 THE COURT: I don't believe they do.

11 MS. JONES: So I'm not sure how we should handle
12 that, should I just print them.

13 MR. RIOPELLE: Should we just send back the charts
14 and tell the jury that at the bottom there's a description of
15 the evidence, and if you want -- they may be able to resolve
16 the issue just with the charts.

17 THE COURT: I agree with Mr. Riopelle.

18 MR. RIOPELLE: Tell them if you want this
19 evidence --

20 MS. JONES: That's fine, Your Honor.

21 MR. ROSS: Judge, if I might be heard. The only
22 thing that we disagree about is it does appear that backup on
23 the charts would include an Oremland review of the blue
24 sheets. So our suggestion is to load those blue sheets on to
25 a laptop and let the jury look at them, if they want to.

1 MR. RIOPELLE: Or you can tell the jury.

2 MS. JONES: That's not -- I don't believe the blue
3 sheets are listed on her chart as the backup. They are not.

4 THE COURT: We'll let them go forward after they're
5 advised that the exhibits that are attached are available, if
6 they think they need them. And if they want something else,
7 please let us know.

8 MR. RIOPELLE: Yes, I suggest the blue sheets. I
9 think that's they mean by "blueprint."

10 MR. ROSS: It certainly seems clear they mean blue
11 sheets by blueprint. And Ms. Oremland did review those in
12 come --

13 MR. BINI: I don't think that's what they mean, Your
14 Honor, because they said "blueprint." They said it also with
15 respect to the trading records of the Glendale account, which
16 are actual physical hard copies of the David Ben-Bassat
17 trading records.

18 THE COURT: We'll let the jury tell us what they
19 want.

20 MR. BINI: Sure. Absolutely.

21 We'll get those exhibits, and tell you when they're
22 ready, Your Honor.

23 THE COURT: When they're ready, then we'll come back
24 and we'll tell them what we're sending in with them. And be
25 ready with the excerpt at the same time. We'll do them all at

1 once.

2 MR. BINI: Yes, sir.

3 THE COURT: See you whenever you guys can get over.

4 MR. ROSS: Judge, can I just make one more request
5 on the blue sheets, if they want them.

6 Can they be ready in case, so we don't have to wait,
7 if that's what they want to see?

8 MS. JONES: Your Honor, we don't have a laptop that
9 we can send back to the jury. All of our laptops are, you
10 know, password protected.

11 THE COURT: You don't have one here?

12 MR. RIOPELLE: I do. It's the one with the
13 screensaver that says, you know, free the defendants. We'll
14 send that back.

15 THE COURT: Sending them back the blue sheets should
16 be avoided.

17 MR. ROSS: Judge, obviously we disagree with that.

18 THE COURT: If that's what they want, and if it's in
19 evidence, they can have a it.

20 MR. ROSS: That's fine, Judge, thank you.

21 THE COURT: Very simple.

22 (Whereupon, a recess was taken at 11:38 a.m.)

23 THE COURTROOM DEPUTY: All rise. Court is back in
24 session.

25 Counsel for both sides are present, including the

1 defendants.

2 THE COURT: All right. In the interim we've receive
3 received another note, which the deputy will mark as Court 6
4 and read.

5 (Court Exhibit 6, was received in evidence.)

6 THE COURTROOM DEPUTY: Your Honor, can we please
7 have Godffrey's subscription agreements for his stocks,
8 please. The documents that had Godffrey's signs, slash, fake
9 signs related to Northwest and Cubed.

10 Signed by William Williamson, May 4th, 2018.

11 THE COURT: What we'll do is bring the jury in now.
12 You all can find those things. If you find them before we
13 send the jury back with the documents, we'll send them in. If
14 you can't, we'll send them in separately.

15 MS. JONES: Yes, Your Honor.

16 And I just wanted to clarify one thing. I actually
17 made a misstatement before about the Deb Oremland's charts.
18 One of the documents -- one of the government's exhibits that
19 she references on her chart is 143-3. I didn't realize it,
20 but that's the Cubed blue sheet data. It's electronic format,
21 so we'd have to see if they really want it, but those are blue
22 sheets, okay.

23 THE COURT: You don't have them in hard copy.

24 MS. JONES: We don't. I'm asking -- we're trying to
25 figure out how many pages it would be if we printed it up.

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1 THE COURT: I will advise them of that and they can
2 let us know.

3 MR. ROSS: Judge, a number of the other documents
4 that are referenced on Ms. Oremland's charts are also in
5 electronic form, I believe.

6 MS. JONES: No, actually -- sorry, Your Honor, to be
7 clear, I listed which ones are referenced on those charts.
8 One, two, three, total of five government exhibits for both
9 charts.

10 Two of the documents are in hard copy that we can
11 send back, 196-1, which we have in our pile, which is the
12 closing price of blue sheet. So that's just a two-page
13 document, so we have that.

14 And the other one is David Ben-Bassat's Glendale
15 account statements. So that's also going back. So it's three
16 government exhibits that are listed on those charts that are
17 not going back right now.

18 THE COURT: Those are electronic?

19 MS. JONES: Yes, I believe so. 143 is blue sheet
20 data. That's definitely electronic. I'm looking at other two
21 right now.

22 MR. ROSS: And just if any effort can be made, if
23 possible, to print those out so they're ready if they want to
24 see them.

25 THE COURT: That's not happening right now. And

1 we're not going to keep them detained from their
2 deliberations.

3 MR. ROSS: Absolutely.

4 (Pause.)

5 (Jury enters the courtroom.)

6 THE COURT: Be seated, please.

7 Counsel will stipulate that the jury is present and
8 properly seated.

9 MS. JONES: Yes, Your Honor.

10 MR. ROSS: Agreed, Judge.

11 THE COURT: Thank you, Counsel.

12 Ladies and gentlemen, welcome back. We know you've
13 been busy deliberating since you were all together this
14 morning.

15 We have your notes. We have been able to gather
16 most of what you've requested. We're sending back some.
17 There are documents, the chart documents, that we think you
18 were looking for. On the backside of those are references to
19 the exhibits from whence they came that includes blue sheet
20 data, which is a significant amount of material.

21 That's all probably in electronic form. But if you
22 need it, we can end up printing it out and sending it back.
23 But we'll give you this first cut of what we think you wanted.
24 And if there are other things that you want in addition to the
25 cut we sent back to you, just simply send us another note and

1 we will look for them and/or create them in hard copy, to the
2 extent that's what you wish.

3 Now, as you recall, we understood your reference to
4 the telephone calls or the text, the wires related to Count
5 Nine to be the ones you heard yesterday and that you wanted to
6 have them replayed for you, and we've arranged -- for all the
7 mechanical gremlins permitting, we've arranged we think to be
8 able to do that for you.

9 Ms. Jones, you can do that.

10 MS. JONES: Yes.

11 For Count Nine, that is Government Exhibit 198-77.
12 It's an excerpt that goes from zero to one minute three
13 seconds, the June 12th, 2014 telephone call between AJ Discala
14 and Craig Josephberg regarding StarStream.

15 (Audio recording played.)

16 MS. JONES: That's the end of that call, Your Honor.

17 THE COURT: You tricked me yesterday there was more,
18 one of the other calls, and I wasn't sure if it was this one.

19 So that's the end of the entire call.

20 MS. JONES: Yes, Your Honor.

21 THE COURT: Ladies and gentlemen, we also got your
22 second note. I don't know if those documents are available to
23 go in with the first batch that you asked for, but if they're
24 not, we will send them in separately, and we'll send you back
25 to the jury room to continue your deliberations. And I'm sure

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1 William's arranged for lunch at some point.

2 (Jury exits the courtroom.)

3 MS. JONES: Your Honor, let me -- I just wanted to
4 put on the record what exhibits we're sending back.

5 It's Government Exhibit 178-40. 180-1. 142-9.
6 149-4. 129-107. 196-12. 196-13. And 196-11. Thank you.

7 THE COURT: Okay. So I wouldn't wander too far just
8 in case they want something.

9 MS. JONES: We still need to pull the Marche
10 Godffrey item they just asked for.

11 THE COURT: If you don't have a problem with that,
12 you can give them to William or the marshal and they'll go
13 directly back.

14 MS. JONES: Okay, great. Thank you.

15 (Whereupon, a recess was taken at 12:13 p.m.)

16 THE COURTROOM DEPUTY: All rise. Court is back in
17 session.

18 Counsel for both sides are present, including the
19 defendants.

20 THE COURT: Be seated. We have another note. The
21 clerk will mark as Exhibit 7?

22 (Court Exhibit 7, was received in evidence.)

23 THE COURTROOM DEPUTY: Yes.

24 It reads: Your Honor, can we please listen to all
25 the calls that included Kyleen.

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1 Can we also have all the texts that included Kyleen
2 as well, please.

3 Signed by William Williamson.

4 MR. BINI: Your Honor, we have all the calls ready
5 to go. With the text messages, we just about have those ready
6 to go. And we thought, if counsel agrees to play the calls,
7 review the text messages to review to make sure that you are
8 in agreement so can you give me a list of the calls so I can
9 at least get that?

10 MR. RIOPELLE: Absolutely.

11 THE COURT: Give us the signal.

12 (Pause.)

13 MR. BINI: Your Honor, I think we do have agreement
14 with Mr. Riopelle regarding which calls they are, so if you
15 want to bring out the jury, we're ready to go.

16 THE COURT: Sounds like a plan.

17 (Pause.)

18 (Jury enters the courtroom.)

19 THE COURT: Be seated, please.

20 Counsel will stipulate that the jury is present and
21 properly seated.

22 MS. JONES: Yes, Your Honor.

23 MR. ROSS: Agreed, Judge.

24 MR. RIOPELLE: So stipulated.

25 THE COURT: Thank you, counsel.

1 Ladies and gentlemen, we have your notes. As you
2 know the drill by now, you've asked for wire intercepts. They
3 have been played in court. We will do that, and we will be
4 able to give you the text message intercepts on paper, which
5 you will be able to take back in the jury room when you return
6 to deliberations. So the government will now play the
7 excerpts of the wires that you've requested.

8 MS. JONES: Yes, Your Honor. So there's going to be
9 a total of nine government exhibits. The first one is
10 Government Exhibit 198-23. This is a May 21st, 2014 call
11 between AJ Discala and Kyleen Cane, and this is the complete
12 call.

13 (Audio recording played.)

14 MS. JONES: I'm sorry, Your Honor, that doesn't seem
15 to be 198-23. That's 28.

16 THE COURT: That is one of the ones that are going
17 to be played any way, right?

18 MS. JONES: Yes.

19 (Audio recording played.)

20 MS. JONES: Okay, the next call is Government
21 Exhibit 198-28. A May 23rd call between Discala and Cane, and
22 this is again the complete call.

23 (Audio recording played.)

24 MS. JONES: Okay, so the next call is Government
25 Exhibit 198-29. It's another call from May 23rd, 2014,

1 between Discala and Cane.

2 (Audio recording played.)

3 MS. JONES: So the next call is Government
4 Exhibit 198-33. A May 23rd call between Abraxas Discala and
5 Kyleen Cane.

6 (Audio recording played.)

7 MS. JONES: The next exhibit -- the next call is
8 Government Exhibit 198-34. A May 27 call between Discala and
9 Kyleen Cane.

10 (Audio recording played.)

11 MS. JONES: The next call is Government
12 Exhibit 198-41. A June 3rd, 2014 call between Discala and
13 Cane. That has three excerpts. The first excerpt goes from a
14 minute zero to 331. The second excerpt goes from a minute
15 five, 56 seconds to a minute eight and 18 seconds. And the
16 third excerpt goes from a minute 1029 to the end.

17 (Audio recording played.)

18 MS. JONES: All right, the next exhibit is
19 Government Exhibit 198-42. This is a call from June 4, 2014
20 between Discala and Cane. Again this is an excerpt. We're
21 going to play from the beginning of the call to a minute four
22 second 33.

23 (Audio recording played.)

24 MS. JONES: The next call is Government
25 Exhibit 198-57. It is a voice mail from June 6th, 2014.

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1 (Audio recording played.)

2 MS. JONES: Okay, the last call is Government
3 Exhibit 198-60. A June 24, 2014 call between Discala and
4 Kyleen Cane.

5 (Audio recording played.)

6 MS. JONES: Okay, Your Honor, that was the last
7 call.

8 THE COURT: Okay, ladies and gentlemen, those are
9 the calls you asked to be played to you.

10 Counsel, I believe have the text messages ready to
11 go back with the jury?

12 MS. JONES: Almost, Your Honor. We're going to
13 assemble them.

14 THE COURT: All right, ladies and gentlemen, we'll
15 send you back to the jury room for further deliberations. And
16 when those text messages are completely assembled, the marshal
17 will bring them in.

18 Again thank you for your patience and cooperation.
19 Continue on with your work.

20 (Jury exits the courtroom.)

21 MR. BINI: Your Honor, if we could have just one
22 minute because we might put the exhibits on the record with
23 Your Honor.

24 THE COURT: Okay, absolutely.

25 (Pause.)

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1 MS. JONES: All right, what we're sending back are
2 from the 129 series from Kyleen Cane's cell phone. So it
3 begins 129 dash, dash, 4, 7, 9, 24, 15, 20.

4 MR. RIOPELLE: 50 did you say?

5 MS. JONES: 15. 20, 21, 22, 24, 25, 26, 28, 30, 31,
6 38, 41.

7 MR. RIOPELLE: What about 32?

8 MS. JONES: 32?

9 MR. RIOPELLE: That's messages between Kyleen Cane,
10 David Ben-Bassat, et cetera.

11 MS. JONES: We'll double check that one. What
12 number was I at?

13 MR. RIOPELLE: You just read 31 and skipped 2. I
14 don't know if you has 38 either, but 38.

15 THE COURT: We'll ask the reporter what she has.

16 MS. JONES: 31, 38, 41, 42, 43, 44, 46, 47, 51, 49.

17 MR. RIOPELLE: Again, we're skipping 49 there, and
18 that appears to be a text message between Mr. Cane and
19 Mr. Wexler.

20 MS. JONES: I did them out of order. I'm sorry.
21 47, 51, 49. Sorry.

22 56, 57, 58, 59, 60, 61, 69.

23 I had skipped before number 16, but that's also
24 included.

25 MR. RIOPELLE: Okay.

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1 MS. JONES: 86, 87, 88, 89.

2 Government Exhibits 92 through 104, and 106.

3 MR. RIOPELLE: Okay. What about 107?

4 MS. JONES: And 107.

5 MR. BINI: 107's already back there.

6 MR. RIOPELLE: Okay.

7 MR. BINI: You know what, 32 went in as well. It
8 went in during David Ben-Bassat's testimony.

9 MR. RIOPELLE: All right.

10 And I think there are some text messages from
11 Mr. Discala's phone that also included my client.

12 MS. JONES: Which ones?

13 MR. RIOPELLE: I don't know. They should be on your
14 exhibit list, right? Which are the numbers that are
15 Mr. Discala's text messages?

16 MR. BINI: 199 series. We had looked through them
17 and didn't see any.

18 MR. RIOPELLE: Okay, let me just double check.

19 (Pause.)

20 MR. BINI: And I should just note for the record,
21 Roland, we put in another copy of 129-107.

22 MR. RIOPELLE: Okay, I see no text messages then on
23 Mr. Discala's phone. All right.

24 THE COURT: You all agree?

25 MR. RIOPELLE: Yes.

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1 THE COURT: Okay. We will be in touch.

2 MR. BINI: Thank you Judge.

3 MR. HEIN: Thank you, Your Honor.

4 (Whereupon, a recess was taken at 3:20 p.m.)

5 THE COURTROOM DEPUTY: All rise. The court is back
6 in session.

7 Counsel for both side are present, including the
8 defendants.

9 THE COURT: We have two notes from the jury, be
10 seated, which will be marked. And the first one will be
11 marked as Court's 8. The second one will be marked as Court's
12 9.

13 (Court Exhibit 8, was received in evidence.)

14 (Court Exhibit 9, was received in evidence.)

15 THE COURTROOM DEPUTY: Exhibit 8 reads: We are done
16 debating.

17 THE COURT: Yes, and then I responded in writing.

18 THE COURTROOM DEPUTY: Can you please explain the
19 meaning of your note. Thanks.

20 Signed by Eric Vitaliano, US District Judge, dated
21 5/4/18 at 4:01 p.m.

22 They came back with Exhibit 9. Sorry for the
23 confusion, Your Honor, we have come up with the verdict.

24 Signed by William Williamson. May 4th, 2018.

25 THE COURT: Okay, we will bring the jury in, and

1 take their verdict.

2 (Pause.)

3 (Jury enters the courtroom.)

4 THE COURT: Be seated, please.

5 Counsel will stipulate that the jury is present and
6 properly seated.

7 MS. JONES: Yes, Your Honor.

8 MR. ROSS: Agreed, Judge.

9 MR. RIOPELLE: So stipulated.

10 THE COURT: Thank you, counsel.

11 Ladies and gentlemen, we have gotten your note and
12 we understand you have a verdict.

13 The foreperson will hand that to the deputy clerk,
14 Mr. Villanueva.

15 (Pause.)

16 THE COURT: The clerk will mark that verdict sheet
17 at Court Exhibit 10.

18 (Court Exhibit 10, was received in evidence.)

19 THE COURT: The clerk will take the verdict.

20 THE COURTROOM DEPUTY: Count One, conspiracy to
21 commit securities fraud.

22 As to Defendant Abraxas Discala, how do you find
23 Defendant Abraxas Discala, not guilty or guilty?

24 THE JURY: We find him guilty.

25 THE COURTROOM DEPUTY: As to Defendant Kyleen Cane,

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1 how to you find Defendant Kyleen Cane, not guilty or guilty?

2 THE JURY: Not guilty.

3 THE COURTROOM DEPUTY: Which of the following overt
4 acts do you unanimously find to have been committed in
5 furtherance of conspiracy charged in Count One. Check all
6 that apply.

7 Have you checked off any of the overt acts, yes or
8 no?

9 THE JURY: Yes.

10 THE COURTROOM DEPUTY: Which overt acts have you
11 checked off by letter?

12 THE JURY: B, D, G, H, and I -- L, sorry.

13 THE COURTROOM DEPUTY: Count Two, conspiracy to
14 commit mail wire fraud.

15 As to Defendant Abraxas Discala, how do you find
16 Defendant Abraxas Discala, not guilty or guilty?

17 THE JURY: Guilty.

18 THE COURTROOM DEPUTY: As to Defendant Kyleen Cane,
19 how do you find Defendant Kyleen Cane, not guilty or guilty?

20 THE JURY: Not guilty.

21 THE COURTROOM DEPUTY: Count Three, securities
22 fraud, RE, CodeSmart.

23 As to Defendant Abraxas Discala, how do you find
24 Defendant Abraxas Discala, not guilty or guilty?

25 THE JURY: Guilty.

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1 THE COURTROOM DEPUTY: Count Four, securities fraud,
2 RE, Cubed.

3 As to Defendant Abraxas Discala, how do you find the
4 Defendant Abraxas Discala, not guilty or guilty?

5 THE JURY: Guilty.

6 THE COURTROOM DEPUTY: As to Defendant Kyleen Cane,
7 how do you find Defendant Kyleen Cane, not guilty or guilty?

8 THE JURY: Not guilty.

9 THE COURTROOM DEPUTY: Count Five, wire fraud on
10 May 9th, 2014.

11 As to Abraxas Discala, how do you find Defendant
12 Abraxas Discala, not guilty or guilty?

13 THE JURY: Guilty.

14 THE COURTROOM DEPUTY: Count Six, wire fraud on
15 May 9th, 2014.

16 As to Defendant Abraxas Discala, how do you find
17 Defendant Abraxas Discala, not guilty or guilty?

18 THE JURY: Guilty.

19 THE COURTROOM DEPUTY: Count Seven, wire fraud on
20 May 9th, 2014.

21 As to Defendant Abraxas Discala, how do you find
22 Defendant Abraxas Discala, not guilty or guilty?

23 THE JURY: Guilty.

24 THE COURTROOM DEPUTY: Count Eight, wire fraud on
25 June 12th, 2014.

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1 As to Defendant Abraxas Discala, how do you find
2 Defendant Abraxas Discala, not guilty or guilty?

3 THE JURY: Not guilty.

4 THE COURTROOM DEPUTY: Count Nine, wire fraud on
5 June 12th, 2014.

6 As to the Defendant Abraxas Discala, how do you find
7 the Defendant Abraxas Discala, not guilty or guilty?

8 THE JURY: Not guilty.

9 THE COURTROOM DEPUTY: Count Ten, wire fraud on
10 June 12th, 2014.

11 As to Defendant Abraxas Discala, how do you find
12 Defendant Abraxas Discala, not guilty or guilty?

13 THE JURY: Guilty.

14 THE COURTROOM DEPUTY: Thank you.

15 THE COURT: Anyone wish the jury polled?

16 MR. ROSS: Yes, Judge.

17 THE COURT: As to all counts, Mr. Ross?

18 MR. ROSS: Yes, sir. As to the counts certainly
19 that apply to Mr. Discala.

20 THE COURT: They all apply to Mr. Discala.

21 MR. ROSS: Yes.

22 THE COURT: Are you including the ones where he was
23 found not guilty?

24 MR. ROSS: Just the verdict sheet.

25 THE COURT: The clerk will poll the jury with

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1 respect to the counts on which Mr. Discala was found guilty,
2 and with respect to the overt acts found by the jury.

3 THE COURTROOM DEPUTY: Count One, conspiracy to
4 commit securities fraud as to Defendant Abraxas Discala. How
5 do you find Defendant Abraxas Discala? Your verdict was
6 "guilty."

7 Jury Number One, is that your verdict?

8 THE JURY: Yes, it is.

9 THE COURTROOM DEPUTY: Juror Number Two, is that
10 your verdict?

11 THE JURY: Yes, it is.

12 THE COURTROOM DEPUTY: Juror Number Three, is that
13 your verdict?

14 THE JURY: Yes.

15 THE COURTROOM DEPUTY: Juror Number Four, is that
16 your verdict?

17 THE JURY: Yes.

18 THE COURTROOM DEPUTY: Juror Number Five, is that
19 your verdict?

20 THE JURY: Yes.

21 THE COURTROOM DEPUTY: Juror Number Six, is that
22 your verdict?

23 THE JURY: Yes.

24 THE COURTROOM DEPUTY: Juror Number Seven, is that
25 your verdict?

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1 THE JURY: Yes.

2 THE COURTROOM DEPUTY: Juror Number Eight, is that
3 your verdict?

4 THE JURY: Yes.

5 THE COURTROOM DEPUTY: Juror Number Nine, is that
6 your verdict?

7 THE JURY: Yes.

8 THE COURTROOM DEPUTY: Juror Number Ten, is that
9 your verdict?

10 THE JURY: Yes.

11 THE COURTROOM DEPUTY: Juror Number Eleven, is that
12 your verdict?

13 THE JURY: Yes.

14 THE COURTROOM DEPUTY: Juror Number Twelve, is that
15 your verdict?

16 THE JURY: Yes.

17 THE COURTROOM DEPUTY: As to the following overt
18 acts committed in furtherance of the conspiracy charged in
19 Count One, you checked off "B, D, G, H, and L."

20 Juror Number One, is that your verdict?

21 THE JURY: Yes, it is.

22 THE COURTROOM DEPUTY: Juror Number Two, is that
23 your verdict?

24 THE JURY: Yes.

25 THE COURTROOM DEPUTY: Juror Number Three, is that

PROCEEDINGS

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1 your verdict?

2 THE JURY: Yes.

3 THE COURTROOM DEPUTY: Juror Number Four, is that

4 your verdict?

5 THE JURY: Yes.

6 THE COURTROOM DEPUTY: Juror Number Five, is that

7 your verdict?

8 THE JURY: Yes.

9 THE COURTROOM DEPUTY: Juror Number Six, is that

10 your verdict?

11 THE JURY: Yes.

12 THE COURTROOM DEPUTY: Juror Number Seven, is that

13 your verdict?

14 THE JURY: Yes.

15 THE COURTROOM DEPUTY: Juror Number Eight, is that

16 your verdict?

17 THE JURY: Yes.

18 THE COURTROOM DEPUTY: Juror Number Nine, is that

19 your verdict?

20 THE JURY: Yes.

21 THE COURTROOM DEPUTY: Juror Number Ten, is that

22 your verdict?

23 THE JURY: Yes.

24 THE COURTROOM DEPUTY: Juror Number Eleven, is that

25 your verdict?

PROCEEDINGS

3890

1 THE JURY: Yes.

2 THE COURTROOM DEPUTY: Juror Number Twelve, is that
3 your verdict?

4 THE JURY: Yes.

5 THE COURTROOM DEPUTY: Count Two, conspiracy to
6 commit mail and wire fraud. As to Defendant Abraxas Discala,
7 how do you find Defendant Abraxas Discala? Your verdict was
8 "guilty."

9 Jury Number One, is that your verdict?

10 THE JURY: Yes.

11 THE COURTROOM DEPUTY: Juror Number Two, is that
12 your verdict?

13 THE JURY: Yes.

14 THE COURTROOM DEPUTY: Juror Number Three, is that
15 your verdict?

16 THE JURY: Yes.

17 THE COURTROOM DEPUTY: Juror Number Four, is that
18 your verdict?

19 THE JURY: Yes.

20 THE COURTROOM DEPUTY: Juror Number Five, is that
21 your verdict?

22 THE JURY: Yes.

23 THE COURTROOM DEPUTY: Juror Number Six, is that
24 your verdict?

25 THE JURY: Yes.

PROCEEDINGS

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1 THE COURTROOM DEPUTY: Juror Number Seven, is that
2 your verdict?

3 THE JURY: Yes.

4 THE COURTROOM DEPUTY: Juror Number Eight, is that
5 your verdict?

6 THE JURY: Yes.

7 THE COURTROOM DEPUTY: Juror Number Nine, is that
8 your verdict?

9 THE JURY: Yes.

10 THE COURTROOM DEPUTY: Juror Number Ten, is that
11 your verdict?

12 THE JURY: Yes.

13 THE COURTROOM DEPUTY: Juror Number Eleven, is that
14 your verdict?

15 THE JURY: Yes.

16 THE COURTROOM DEPUTY: Juror Number Twelve, is that
17 your verdict?

18 THE JURY: Yes.

19 THE COURTROOM DEPUTY: Count Three, securities
20 fraud, RE, CodeSmart. As to Defendant Abraxas Discala, how do
21 you find the Defendant Abraxas Discala? Your verdict was
22 "guilty".

23 Juror Number One, is that your verdict?

24 THE JURY: Yes.

25 THE COURTROOM DEPUTY: Juror Number Two, is that

PROCEEDINGS

3892

1 your verdict?

2 THE JURY: Yes.

3 THE COURTROOM DEPUTY: Juror Number Three, is that

4 your verdict?

5 THE JURY: Yes.

6 THE COURTROOM DEPUTY: Juror Number Four, is that

7 your verdict?

8 THE JURY: Yes.

9 THE COURTROOM DEPUTY: Juror Number Five, is that

10 your verdict?

11 THE JURY: Yes.

12 THE COURTROOM DEPUTY: Juror Number Six, is that

13 your verdict?

14 THE JURY: Yes.

15 THE COURTROOM DEPUTY: Juror Number Seven, is that

16 your verdict?

17 THE JURY: Yes.

18 THE COURTROOM DEPUTY: Juror Number Eight, is that

19 your verdict?

20 THE JURY: Yes.

21 THE COURTROOM DEPUTY: Juror Number Nine, is that

22 your verdict?

23 THE JURY: Yes.

24 THE COURTROOM DEPUTY: Juror Number Ten, is that

25 your verdict?

PROCEEDINGS

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1 THE JURY: Yes.

2 THE COURTROOM DEPUTY: Juror Number Eleven, is that
3 your verdict?

4 THE JURY: Yes.

5 THE COURTROOM DEPUTY: Juror Number Twelve, is that
6 your verdict?

7 THE JURY: Yes.

8 THE COURTROOM DEPUTY: Count Four, securities fraud,
9 RE, Cubed. As to Defendant Abraxas Discala, how do you find
10 the Defendant Abraxas Discala? Your verdict was "guilty.

11 Juror Number One, is that your verdict?

12 THE JURY: Yes.

13 THE COURTROOM DEPUTY: Juror Number Two, is that
14 your verdict?

15 THE JURY: Yes.

16 THE COURTROOM DEPUTY: Juror Number Three, is that
17 your verdict?

18 THE JURY: Yes.

19 THE COURTROOM DEPUTY: Juror Number Four, is that
20 your verdict?

21 THE JURY: Yes.

22 THE COURTROOM DEPUTY: Juror Number Five, is that
23 your verdict?

24 THE JURY: Yes.

25 THE COURTROOM DEPUTY: Juror Number Six, is that

PROCEEDINGS

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1 your verdict?

2 THE JURY: Yes.

3 THE COURTROOM DEPUTY: Juror Number Seven, is that
4 your verdict?

5 THE JURY: Yes.

6 THE COURTROOM DEPUTY: Juror Number Eight, is that
7 your verdict?

8 THE JURY: Yes.

9 THE COURTROOM DEPUTY: Juror Number Nine, is that
10 your verdict?

11 THE JURY: Yes.

12 THE COURTROOM DEPUTY: Juror Number Ten, is that
13 your verdict?

14 THE JURY: Yes.

15 THE COURTROOM DEPUTY: Juror Number Eleven, is that
16 your verdict?

17 THE JURY: Yes.

18 THE COURTROOM DEPUTY: Juror Number Twelve, is that
19 your verdict?

20 THE JURY: Yes.

21 THE COURTROOM DEPUTY: Count Five, wire fraud on
22 May 9th, 2014. As to Defendant Abraxas Discala, how do you
23 find Defendant Abraxas Discala? Your verdict was "guilty".

24 Juror Number One, is that your verdict?

25 THE JURY: Yes.

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1 THE COURTROOM DEPUTY: Juror Number Two, is that
2 your verdict?

3 THE JURY: Yes.

4 THE COURTROOM DEPUTY: Juror Number Three, is that
5 your verdict?

6 THE JURY: Yes.

7 THE COURTROOM DEPUTY: Juror Number Four, is that
8 your verdict?

9 THE JURY: Yes.

10 THE COURTROOM DEPUTY: Juror Number Five, is that
11 your verdict?

12 THE JURY: Yes.

13 THE COURTROOM DEPUTY: Juror Number Six, is that
14 your verdict?

15 THE JURY: Yes.

16 THE COURTROOM DEPUTY: Juror Number Seven, is that
17 your verdict?

18 THE JURY: Yes.

19 THE COURTROOM DEPUTY: Juror Number Eight, is that
20 your verdict?

21 THE JURY: Yes.

22 THE COURTROOM DEPUTY: Juror Number Nine, is that
23 your verdict?

24 THE JURY: Yes.

25 THE COURTROOM DEPUTY: Juror Number Ten, is that

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1 your verdict?

2 THE JURY: Yes.

3 THE COURTROOM DEPUTY: Juror Number Eleven, is that

4 your verdict?

5 THE JURY: Yes.

6 THE COURTROOM DEPUTY: Juror Number Twelve, is that

7 your verdict?

8 THE JURY: Yes.

9 THE COURTROOM DEPUTY: Count Six, wire fraud on
10 May 9th, 2014. As to Defendant Abraxas Discala, how do you
11 find Defendant Abraxas Discala? Your verdict was "guilty."

12 Juror Number One, is that your verdict?

13 THE JURY: Yes.

14 THE COURTROOM DEPUTY: Juror Number Two, is that

15 your verdict?

16 THE JURY: Yes.

17 THE COURTROOM DEPUTY: Juror Number Three, is that

18 your verdict?

19 THE JURY: Yes.

20 THE COURTROOM DEPUTY: Juror Number Four, is that

21 your verdict?

22 THE JURY: Yes.

23 THE COURTROOM DEPUTY: Juror Number Five, is that

24 your verdict?

25 THE JURY: Yes.

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1 THE COURTROOM DEPUTY: Juror Number Six, is that
2 your verdict?

3 THE JURY: Yes.

4 THE COURTROOM DEPUTY: Juror Number Seven, is that
5 your verdict?

6 THE JURY: Yes.

7 THE COURTROOM DEPUTY: Juror Number Eight, is that
8 your verdict?

9 THE JURY: Yes.

10 THE COURTROOM DEPUTY: Juror Number Nine, is that
11 your verdict?

12 THE JURY: Yes.

13 THE COURTROOM DEPUTY: Juror Number Ten, is that
14 your verdict?

15 THE JURY: Yes.

16 THE COURTROOM DEPUTY: Juror Number Eleven, is that
17 your verdict?

18 THE JURY: Yes.

19 THE COURTROOM DEPUTY: Juror Number Twelve, is that
20 your verdict?

21 THE JURY: Yes.

22 THE COURTROOM DEPUTY: Count Seven, wire fraud on
23 May 9th, 2014. As to Defendant Abraxas Discala, how do you
24 find Defendant Abraxas Discala? Your verdict was "guilty."

25 Juror Number One, is that your verdict?

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1 THE JURY: Yes.

2 THE COURTROOM DEPUTY: Juror Number Two, is that
3 your verdict?

4 THE JURY: Yes.

5 THE COURTROOM DEPUTY: Juror Number Three, is that
6 your verdict?

7 THE JURY: Yes.

8 THE COURTROOM DEPUTY: Juror Number Four, is that
9 your verdict?

10 THE JURY: Yes.

11 THE COURTROOM DEPUTY: Juror Number Five, is that
12 your verdict?

13 THE JURY: Yes.

14 THE COURTROOM DEPUTY: Juror Number Six, is that
15 your verdict?

16 THE JURY: Yes.

17 THE COURTROOM DEPUTY: Juror Number Seven, is that
18 your verdict?

19 THE JURY: Yes.

20 THE COURTROOM DEPUTY: Juror Number Eight, is that
21 your verdict?

22 THE JURY: Yes.

23 THE COURTROOM DEPUTY: Juror Number Nine, is that
24 your verdict?

25 THE JURY: Yes.

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1 THE COURTROOM DEPUTY: Juror Number Ten, is that
2 your verdict?

3 THE JURY: Yes.

4 THE COURTROOM DEPUTY: Juror Number Eleven, is that
5 your verdict?

6 THE JURY: Yes.

7 THE COURTROOM DEPUTY: Number Twelve, is that your
8 verdict?

9 THE JURY: Yes.

10 THE COURTROOM DEPUTY: And Count Ten, wire fraud on
11 June 12th, 2014. As to Defendant Abraxas Discala, how do you
12 find Defendant Abraxas Discala? Your verdict was "guilty."

13 Juror Number One, is that your verdict?

14 THE JURY: Yes.

15 THE COURTROOM DEPUTY: Juror Number Two, is that
16 your verdict?

17 THE JURY: Yes.

18 THE COURTROOM DEPUTY: Juror Number Three, is that
19 your verdict?

20 THE JURY: Yes.

21 THE COURTROOM DEPUTY: Juror Number Four, is that
22 your verdict?

23 THE JURY: Yes.

24 THE COURTROOM DEPUTY: Juror Number Five, is that
25 your verdict?

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1 THE JURY: Yes.

2 THE COURTROOM DEPUTY: Juror Number Six, is that
3 your verdict?

4 THE JURY: Yes.

5 THE COURTROOM DEPUTY: Juror Number Seven, is that
6 your verdict?

7 THE JURY: Yes.

8 THE COURTROOM DEPUTY: Juror Number Eight, is that
9 your verdict?

10 THE JURY: Yes.

11 THE COURTROOM DEPUTY: Juror Number Nine, is that
12 your verdict?

13 THE JURY: Yes.

14 THE COURTROOM DEPUTY: Juror Number Ten, is that
15 your verdict?

16 THE JURY: Yes.

17 THE COURTROOM DEPUTY: Juror Number Eleven, is that
18 your verdict?

19 THE JURY: Yes.

20 THE COURTROOM DEPUTY: Juror Number Twelve, is that
21 your verdict?

22 THE JURY: Yes.

23 THE COURTROOM DEPUTY: Thank you.

24 Your Honor, the jurors have been polled.

25 THE COURT: The jurors have been polled.

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1 Does any party have further need of the jury before
2 I discharge them?

3 MS. JONES: No, Your Honor.

4 MR. ROSS: No, Your Honor.

5 MR. RIOPELLE: No, Your Honor.

6 THE COURT: Ladies and gentlemen, on behalf of all
7 of us, I want to thank you for your service.

8 At the very beginning of your service, I indicated
9 to you that I thought other than putting on a uniform and
10 defending your country in the time of war, there is no more
11 difficult, demanding, or patriotic act of citizenship than to
12 serve on a jury.

13 I think now that your service is at an end, you
14 probably have a greater appreciation for what I said to you at
15 the beginning. It was not hyperbole then, I think you know
16 now that that certainly is the case. It is one of the most
17 difficult jobs that we ask any citizen to do to sit here
18 sacrifice not only their time, but then come and have to make
19 some of the most difficult judgments that society can ask your
20 fellow citizen to make.

21 We do appreciate your attentiveness, your patience
22 and your cooperation with us, and how hard your jobs were, and
23 we greatly appreciate that.

24 Now, all of those rules that I've been giving you
25 for more than a month now no longer apply. You can discuss

1 this case to your heart's content. You can be on any social
2 media platform that you like to be on. You can read as many
3 newspapers and listen to as many other media sources that you
4 want. You also have the right to shut things down.

5 But it is not unusual at times that the lawyers who
6 have participated in a case when it is all over are interested
7 in picking the minds of the jurors to get perhaps pointers on
8 what they have done.

9 I don't know if the lawyers here want to do that,
10 but if you're interested in that, you can hang around in the
11 jury room and they'll wander back there and have an
12 opportunity to discuss it with you. You want to put it all
13 behind you, that's your privilege as well.

14 Again, we appreciate your service. Look forward to
15 seeing you again sitting over there and not having to sit in
16 any of these places, but you certainly have been a pleasure to
17 have, and we wish you all well.

18 Have a wonderful weekend and beyond.

19 (Jury exits the courtroom.)

20 THE COURT: Does any party wish to make a motion?

21 MR. RIOPELLE: Your Honor, I move to exonerate bail
22 on behalf of my client.

23 THE COURT: Yes, bail is exonerated.

24 Mechanically I don't know what happens at this hour.

25 MR. RIOPELLE: Nothing. And I'll supply the

1 necessary forms.

2 THE COURT: Okay.

3 MR. RIOPELLE: I do want to say, Your Honor, for the
4 record, the government fought a hard, fair case.

5 Thank you, Your Honor.

6 THE COURT: As I said to you all on one day I really
7 meant, about lawyers generally, particularly those who
8 practice here in our court, we've all been kicked around in
9 our lawyer's lives. But particularly all of you here, it's
10 been a pleasure to have you, and I think you all vigorously
11 represented your respective parties.

12 Those of us who sit up here take great pride in
13 watching you do it. I remember the days when we had an
14 opportunity to be in the arena, too.

15 Now most motion-wise, the motion of the Defendant
16 Cane under Rule 29, which the Court reserved on is denied as
17 academic.

18 With respect to Defendant Discala, they are denied.

19 I assume at some point, Mr. Ross, you wish to make
20 motions under other rules?

21 MR. ROSS: Yes, Judge. And I would ask the Court
22 for an extension of the 14-day limit for making those motions.
23 If we could have six weeks, is that possible?

24 THE COURT: Yes, it's all right with me. Nothing is
25 going to happen with any great speed usually on the Probation

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1 Department's front, but to the extent something does happen
2 there, I'm sure you will be notified to be present and the
3 record will reflect that as well.

4 William is taking of the jury so I don't know where
5 six weeks brings us. Do have a calendar?

6 Whatever that Friday is six weeks hence would be
7 what? Probably sometime in mid-June.

8 MR. RIOPELLE: My calendar says June 8th.

9 THE COURT: You tell me, Mr. Ross.

10 MR. ROSS: That's fine.

11 MR. RIOPELLE: June 15th?

12 MS. JONES: June 15th is fine.

13 THE COURT: June 15th is fine, too. We'll look
14 forward.

15 And the government needs about a month, Ms. Jones?

16 MS. JONES: Yes, that's fine, Your Honor.

17 THE COURT: And you'll have ten days to reply.

18 Ben, will you write that down and let William know
19 what I said?

20 THE LAW CLERK: Yes.

21 THE COURT: Anything else?

22 MS. JONES: Your Honor, there's -- just on the
23 government's side, hopefully probation will move forward with
24 the probation report. We were hoping to expedite sentencing
25 as much as possible for this defendant because the case has

1 been pending for four years, and typically the cooperating
2 witnesses, which we have a number of, are typically not
3 sentenced --

4 THE COURT: I'm not telling probation to slow down,
5 I'm just making an observation.

6 MS. JONES: We would like to move forward with
7 sentencing as quickly as we can.

8 THE COURT: Yes, as soon as they're ready, and you
9 all have had an opportunity to review it and make your
10 presentations, the Court will be prepared to sentence.

11 Normally that is in, if you're lucky, in a 12 --
12 best I've seen, except for couriers, is about a 12-week cycle.

13 MR. ROSS: And there are issues at sentence, Judge.

14 THE COURT: And this is not a case -- just trying to
15 figure out restitution and forfeiture alone probably would
16 require some effort --

17 MR. ROSS: Yes.

18 THE COURT: -- on the part of probation so, yes,
19 probation is certainly not being advised to slow down by any
20 stretch of the imagination. Both the posttrial motions and
21 the probationary investigation will go forward at the same
22 time.

23 MR. ROSS: That's fine, Your Honor. Thank you.

24 MS. JONES: Thank you, Your Honor.

25 THE COURT: All right and, again, it was a pleasure

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1 to have you all.

2 Bail is continued as to Mr. Discala.

3 MR. RIOPELLE: And, Your Honor, my client has asked
4 me to thank you for your performance during the trial.

5 THE COURT: Well, we try to be fair to all sides and
6 it's rare, and I like to keep it rare, especially when we have
7 a defendant who is also a lawyer, so it's always good to hear
8 from other lawyers.

9 Good luck to you, Ms. Cane.

10 MR. RIOPELLE: Thank you, Judge.

11

12 (Whereupon, the matter was concluded.)

13

14 * * * * *

15

16 I certify that the foregoing is a correct transcript from the
17 record of proceedings in the above-entitled matter.

18 s/ Linda D. Danelczyk

May 5, 2018

19

LINDA D. DANELCZYK

DATE

20

21 E X H I B I T S

22 COURT

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